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GENERAL ORDERS, }
No. 159.

WAR DEPARTMENT,

ADJUTANT GENERAL'S OFFICE,

Washington, May 29, 1863.

I. Before a General Court Martial which convened in the city of Washington, D. C., April 3, 1863, pursuant to Special Orders, No. 152, dated April 2, 1863, No. 158, dated April 5, 1863, and No. 159, dated April 7, 1863, War Department, Adjutant General's Office, Washington, and of which Major General E. A. HITCHCOCK, United States Volunteers, is President, was arraigned and tried—

Colonel *Frederick George d'Utassy*, 39th New York Volunteers.

CHARGE I.—“Advising and persuading a soldier to desert.”

Specification 1st—“In this; that he, Colonel *F. G. d'Utassy*, 39th New York Volunteers, did advise and persuade Private Michael Jacky, of Company ‘G,’ 39th New York Volunteers, who had been duly enlisted in the service of the United States, to desert the said service. This at or near Washington, D. C., on or about the 18th of September, 1862.”

Specification 2d—“In this; that he, Colonel *F. G. d'Utassy*, 39th New York Volunteers, did advise and persuade Private T. Koester, of Company ‘K,’ 39th New York Volunteers, who had been duly enlisted in the service of the United States, to desert the said service. This at or near Washington, D. C., on or about the 14th of February, 1863.”

Specification 3d—“In this; that he, Colonel *F. G. d'Utassy*, 39th New York Volunteers, did advise and persuade Private Benoit Baise, of Company ‘G,’ 39th New York Volunteers, who had been duly enlisted in the service of the United States, to desert the said service. This at or near Washington, D. C., on or about the 18th of February, 1863.”

CHARGE II.—“Unlawfully selling and disposing of Government horses for his own benefit.”

Specification 1st—“In this; that he, Colonel *F. G. d'Utassy*, 39th New York Volunteers, did unlawfully sell, without proper order for that

purpose, a horse, the property of the United States, and did fraudulently convert the price he received for said horse to his own use. This at or near Roach's Mill, Virginia, on or about the middle of October, 1861."

Specification 2d—“In this; that he, Colonel F. G. d'Utassy, 39th New York Volunteers, did unlawfully sell, without proper order for that purpose, a horse, the property of the United States, and did fraudulently convert the price he received for said horse to his own use. This at or near Hunter's Chapel, Virginia, in the beginning of the month of December, 1861.”

Specification 3d—“In this; that he, Colonel F. G. d'Utassy, 39th regiment New York Volunteers, did unlawfully sell, without proper order for that purpose, a horse, the property of the United States, and did fraudulently convert the price he received for said horse to his own use. This at or near Hunter's Chapel, Virginia, on or about the 10th day of February, 1862.”

CHARGE III.—“Conduct prejudicial to good order and military discipline.”

Specification 1st—Withdrawn.

Specification 2d—Withdrawn.

Specification 3d—“In this; that he, Colonel F. G. d'Utassy, 39th New York Volunteers, did unlawfully open two private letters directed to Lieutenant Anthony Schada, 39th New York Volunteers, and before they had been delivered to said Schada. This at or near Winchester, Virginia, in the months of July and August, 1862.”

Specification 4th—“In this; that he, Colonel F. G. d'Utassy, 39th New York Volunteers, did unlawfully open two private letters directed to the late Quartermaster E. D. Lazell, 39th New York Volunteers, and before they had been delivered to said Lazell. This at or near Washington, D. C., on or about the 28th of September, 1862.”

Specification 5th—“In this; that he, Colonel F. G. d'Utassy, 39th New York Volunteers, did unlawfully open an official letter directed to Dr. Frederick Wolff, Surgeon of the 39th New York Volunteers,

and did therefrom take a commission belonging to Dr. E. Steiger, 2d Assistant Surgeon, 39th New York Volunteers, which commission Colonel *F. G. d'Utassy* secreted. This at or near Union Mills, Virginia, on or about the 8th of December, 1862."

Specification 6th—"In this; that he, Colonel *F. G. d'Utassy*, 39th New York Volunteers, did unlawfully open a private letter directed to Major A. Weekey, 39th New York Volunteers, before it had been delivered to said Weekey. This at or near New Creek Station, Virginia, on or about the 17th of April, 1862."

Specification 7th—"In this; that he, Colonel *F. G. d'Utassy*, 39th New York Volunteers, did unlawfully sell the appointment of 2d Lieutenant of the 39th New York Volunteers to Sergeant Emil Joerin, Company 'D,' 39th Regiment New York Volunteers, for the sum of fifty dollars. This at or near Winchester, Virginia, on or about the 25th of July, 1862."

Specification 8th—"In this; that he, Colonel *F. G. d'Utassy*, 39th New York Volunteers, did unlawfully sell the appointment, or pretended appointment, of Major of the 39th New York Volunteers to Captain Charles Wiegand, Company 'A,' 39th New York Volunteers, for the sum of one hundred and eighty dollars, more or less. This at or near Roach's Mill, Virginia, on or about the 1st of August, 1861."

Specification 9th—"In this; that he, Colonel *F. G. d'Utassy*, 39th New York Volunteers, did unlawfully appoint, or pretend to appoint, one Ignaz Batory sutler of the said regiment, in consideration of four hundred and twenty dollars, to be paid by said Batory to said *Utassy*, which said sum was actually paid as aforesaid. This at or near Roach's Mill, Virginia, on or about the 25th of September, 1861."

Specification 10th—"In this; that he, Colonel *F. G. d'Utassy*, 39th New York Volunteers, did cause it to be falsely represented to Augustine Montegriffo, sutler of the 39th New York Volunteers, that if he would give to said *d'Utassy* and another the various sums of money hereinafter named, that the same sums would be spent for

the regiment; under which false pretence said *Utassy* did cause said Montegriffo to be cheated out of the said sums of money, at the times and places hereinafter named:

One hundred dollars at or near Hunter's Chapel, Virginia, in the month of February, 1862.

One hundred and fifty dollars at or near Roach's Mill, Virginia, in the month of August, 1861.

Three hundred dollars at or near Hunter's Chapel, Virginia, on or about 21st of November, 1861.

One hundred dollars at or near Fairfax Court-House, Virginia, in the month of March, 1862.

One hundred dollars at or near Romney, Viginia, in the month of May, 1862.

One hundred and twenty-five dollars at or near Cumberland, Maryland, in the month of May, 1862."

Specification 11th—“In this; that he, Colonel *F. G. d'Utassy*, 39th New York Volunteers, did cheat Captain Christian Encke, Captain A. Schurkardi, Captain Charles Hoffman, Captain B. Baer, Lieutenant A. Pasquet, Lieutenant B. Pollack, Lieutenant A. P. Zyla, all of the 39th regiment New York State Volunteers, of ninety dollars, under the false pretence that the said sum of money was to be used for recruiting purposes. This at or near Winchester, Virginia, on or about the 29th of August, 1862.”

Specification 12th—“In this; that he, Colonel *F. G. d'Utassy*, 39th New York Volunteers, did cause to be falsely altered the muster-rolls for pay of the 39th New York State Volunteers, already signed by the duly appointed mustering officer, for the months of September and October, 1862. This at or near Union Mills, Virginia, on or about the 27th day of December, 1862.”

Specification 13th—“In this; that he, Colonel *F. G. d'Utassy*, of the 39th Regiment New York Volunteer Infantry, did corruptly receive from the United States Government the sum of three thousand two hundred and sixty-five dollars and forty cents, by presenting to the agent and proper authority of the United States Government for payment a false and fraudulent account, which said account is in the words and figures following, to wit:

" " No. 22.

" " The United States to Colonel d'Utassy, 39th Regiment New York Infantry Volunteers, Dr.

" " 1861.—For reimbursement of expenses incurred by him in recruiting for his Regiment, viz:

" " Subsistence of recruits—

" " April 21 to May 7.	Per Voucher No. 1....	\$467 20
" " April 24 to May 7.	Per Voucher No. 2....	339 60
" " May 1 to May 12.	Per Voucher No. 3....	302 80
" " May 5 to May 13.	Per Voucher No. 4....	216 80
" " May 4 to May 14.	Per Voucher No. 5....	242 80
" " May 4 to May 13.	Per Voucher No. 6....	244 00
" " May 1 to May 14.	Per Voucher No. 7....	373 60
" " May 3 to May 17.	Per Voucher No. 8....	296 40
" " May 5 to May 13.	Per Voucher No. 9....	198 00
" " May 8 to May 15.	Per Voucher No. 10....	235 20

" " Rent for recruiting offices—

" " May 1 to May 13.	Per Voucher No. 11....	24 00
" " April 16 to May 18.	Per Voucher No. 12....	72 00
" " April 24 to May 16.	Per Voucher No. 13....	40 00
" " April 16 to May 15.	Per Voucher No. 14....	64 50
" " May 2 to May 18.	Per Voucher No. 15....	28 50
" " April 20 to May 16.	Per Voucher No. 16....	56 00
" " May 1 to May 16.	Per Voucher No. 17....	28 00
" " April 21 to May 11.	Per Voucher No. 18....	36 00
		\$3,265 40

" " I certify that the above account is correct and just, that the services were rendered as stated, and that they were necessary for the public service.

" " D'UTASSY, Colonel.

" " Received, at Washington, the 27th of November, 1861, of Lieutenant Elwood, Quartermaster United States Army, the sum of three thousand two hundred and sixty-five dollars and forty cents, in full of the above account.

" " D'UTASSY, Colonel."

He, said Colonel *F. G. d'Utassy*, well knowing at the time he presented and received the payment of said false and fraudulent account that it was not correct and just, and that the services were not rendered as stated, and that they were not necessary for the public service, and that it was not for reimbursement of expenses incurred by him in recruiting his Regiment; and well knowing that the said false and fraudulent account was a false and fraudulent account. This done at Washington, D. C., on or about the 27th day of November, 1861."

Specification 14th—“In this ; that he, Colonel *F. G. d'Utassy*, 39th New York Volunteers, did corruptly order, in his official capacity, the name of Constant Casser, a member of the Band, to be placed on the pay-rolls of Company G; the name of Frank Leifels, a member of the Band, to be placed on the pay-rolls of Company D; the name of John Ellenberger, a member of the Band, to be placed on the pay-rolls of Company F; the names of Conrad Lang and Charles Wiese, members of the Band, to be placed on the pay-rolls of Company C; the name of Francis Hecker a member of the Band, to be placed on the pay-rolls of Company F; the name of Reinold Hubner, a member of the Band, to be placed on the pay-rolls of Company K; the names of Caspar Rohn, George Schreiber, and Caspar Ellenberger, members of the Band, to be placed on the pay-rolls of Company H; all of the 39th New York Volunteers, as private soldiers for the months of November and December, 1861, and did corruptly allow and permit them, the said members of the Band, to draw from the United States Paymaster the sum of twenty-six dollars each, as pay for their pretended services as private soldiers for the months of November and December, 1861. In consideration of which, he, Colonel *d'Utassy*, collected from the United States Paymaster, and appropriated to his own use, two hundred and sixty dollars, which were due to the above-named men from the United States for services rendered by them as members of the Band; thereby wilfully and purposely cheating and defrauding the United States Government to the amount of two hundred and sixty dollars for his own use and profit. This done at Hunter's Chapel, Va., on or about the 11th day of February, 1862.”

Specification 15th—“In this; that he, Colonel *F. G. d'Utassy*, 39th New York Volunteers, did corruptly order, in his official capacity, the names of John Burger, Constant Casser, and Francis Schreiber, members of the Band, to be placed on the pay-rolls of Company G; the name of Anton Unruh, a member of the Band, to be placed on the pay-rolls of Company A; the name of Reinold Hubner, a member of the Band, to be placed on the pay-rolls of Company K; the names of Caspar Rohn and George Schreiber, members of the Band, to be placed on the pay-rolls of Company H; the name of Francis Hecker, a member of the Band, to be placed on the pay-rolls of Company F; the names of Charles Wiese and Conrad Lang, members of the Band, to be placed on the pay-rolls of Company C; all of the 39th New York Volunteers, as private soldiers for the months of September and October, 1861, and did corruptly allow and permit them, the said members of the Band, to draw from the United States Paymaster, the sum of twenty-six dollars each as pay for their pretended services as private soldiers for the months of September and October, 1861. In consideration of which, he, Colonel *F. G. d'Utassy*, collected from the United States Paymaster, and appropriated to his own use, two hundred and sixty dollars, which were due to the above-named men from the United States for services rendered by them as members of the Band; thereby wilfully and purposely cheating and defrauding the United States government to the amount of two hundred and sixty dollars for his own use and profit. This done at Hunter's Chapel, Va., on or about the 27th day of November, 1861.”

Specification 16th—“In this; that he, Colonel *F. G. d'Utassy*, 39th New York Volunteers, did corruptly order, in his official capacity, the names of Michael Jacky, a private of Company G, and George Blum, of Company E, each of the 39th New York Volunteers, to be placed on the pay-rolls of the Field, Staff, and Band of the 39th New York Volunteers for the months of September and October, 1861, as members of the said Regimental Band, and did corruptly and fraudulently collect and appropriate to his own use, from the United States Paymaster, the sum of sixty-eight dollars, which sum of money he falsely pretended was due to the said

George Blum and Michael Jacky for services rendered to the United States Government as members of said Band; well knowing that the said George Blum and Michael Jacky were private soldiers, and paid as such, and not members of the said Band; thereby intending to cheat and defraud the United States Government of the sum of sixty-eight dollars for his own use and benefit. This done at Hunter's Chapel, Va., on or about the 27th day of November, 1861."

Specification 17th—“In this; that he, Colonel F. G. d'Utassy, 39th New York Volunteers, did corruptly order, in his official capacity, the names of Michael Jacky, a private of Company G, and George Blum, a private of Company E, each of the 39th New York Volunteers, to be placed on the pay-rolls of the Field, Staff, and Band of the 39th New York Volunteers, for the months of November and December, 1861, as members of the said Regimental Band, and did corruptly and fraudulently collect and appropriate to his own use, from the United States Paymaster, the sum of sixty-eight dollars, which sum of money he falsely pretended was due to the said George Blum and Michael Jacky for services rendered to the United States Government as members of said Band, well knowing that the said George Blum and Michael Jacky were private soldiers, and paid as such, and not members of the said Band: thereby intending to cheat, and defrauding the United States Government of the sum of sixty-eight dollars for his own use and benefit. This done at Hunter's Chapel, Va., on or about the 11th day of February, 1862.”

Specification 18th—“In this; that he, Colonel F. G. d'Utassy, 39th New York Volunteers, having learned that the non-commissioned officers and private soldiers of his said Regiment had been presented with a gift of three gold dollars each by the friends of the said non-commissioned officers and soldiers before leaving New York for the seat of war, did, on or about the 10th day of August, 1861, when the said Regiment was paid off for the month of June, 1861, by the United States Government, fraudulently and corruptly order and compel the said non-commissioned officers and privates,

each and all of them, to pay to him the sum of three dollars, falsely pretending and representing that he was required to return the said three dollars to the donors thereof, and falsely pretending and representing to the said non-commissioned officers and private soldiers that the said three gold dollars given to each of them was only a loan to them, for which he was individually responsible. By which false and fraudulent pretences and representations he, the said Colonel *F. G. d' Utassy*, wilfully and corruptly obtained from the said non-commissioned officers and private soldiers, and appropriated wilfully and corruptly to his own use and benefit, the sum of about two thousand two hundred dollars. This done at Roach's Mill, Virginia, on or about the 10th day of August, 1861."

Specification 19th—“In this; that he, Colonel *F. G. d' Utassy*, 39th New York Volunteers, did wilfully and corruptly, and purposely, order and compel Lieutenant John Dessauer, 39th New York Volunteers, then orderly sergeant of Company ‘G’ of said Regiment, to make a true copy of the proceedings, including the charges, findings, sentence, and orders, in the case of Lieutenant Francesco Ornesi, 39th Regiment New York Volunteers, tried before a General Court Martial convened by order of Major General John C. Frémont, at Mount Jackson, Virginia, on or about the 15th day of June, 1862, and, instead of the name of Lieutenant Francesco Ornesi, 39th New York Volunteers, to put the name of Lieutenant Raffaele Frixione, 39th New York Volunteers; and he, the said Colonel *F. G. d' Utassy*, did then and there wilfully and corruptly and falsely certify that said proceedings of the General Court Martial were a true and correct copy of the original proceedings of the General Court Martial in case of Lieutenant Raffaele Frixione, 39th New York Volunteers, which were said to be lost; he, the said Colonel *F. G. d' Utassy*, well knowing that the said proceedings, including the charges, findings, sentence, and orders, in the case of Lieutenant Francesco Ornesi, 39th New York Volunteers, were not a true copy of the proceedings, including the charges, findings, sentence, and orders, in the case of Lieutenant Raffaele Frixione, 39th New York Volunteers, but well knowing that the same were false and forged; and the said

Colonel *d' Utassy* well knowing that the findings, sentence, and orders, in the case of Lieutenant Francesco Ornesi, 39th New York Volunteers, was dismissal from the service of the United States; thereby corruptly and wilfully causing Lieutenant Frixione to be wrongfully dismissed the service of the United States. This done at or near Front Royal, Virginia, on or about the 14th day of July, 1862."

To which charges and specifications the accused, Colonel *F. G. d' Utassy*, 39th New York Volunteers, pleaded as follows:

CHARGE I.

To the 1st *Specification*, "Not Guilty."
 To the 2d *Specification*, "Not Guilty."
 To the 3d *Specification*, "Not Guilty."
 To the CHARGE, "Not Guilty."

CHARGE II.

To the 1st *Specification*, "Not Guilty."
 To the 2d *Specification*, "Not Guilty."
 To the 3d *Specification*, "Not Guilty."
 To the CHARGE, "Not Guilty."

CHARGE III.

To the 3d *Specification*, "Not Guilty."
 To the 4th *Specification*, "Not Guilty of the specification as it reads, but admits having opened the official letters of Quartermaster Lazell."
 To the 5th *Specification*, "Not Guilty."
 To the 6th *Specification*, "Not Guilty to the specification as it reads, but admits having opened the letter after the death of Major Weckey."
 To the 7th *Specification*, "Not Guilty."
 To the 8th *Specification*, "Not Guilty."
 To the 9th *Specification*, "Not Guilty to the specification as it reads, but admits that he received the money."
 To the 10th *Specification*, "Not Guilty."
 To the 11th *Specification*, "Not Guilty."
 To the 12th *Specification*, "Not Guilty to the specification as it reads, but admits that he did alter the muster-roll to make it correct."

To the 13th *Specification*, "Not Guilty to the specification as it reads, but guilty to having signed and sworn to the account set forth."

To the 14th *Specification*, "Not Guilty to the specification as it reads, but guilty of having permitted the names of the men to be placed on the pay-rolls."

To the 15th *Specification*, "Not Guilty to the specification as it reads, but admits having permitted the names of the men to be placed on the pay-roll."

To the 16th *Specification*, "Not Guilty to the specification as it reads, but admits having permitted the names of the men to be placed on the pay-roll."

To the 17th *Specification*, "Not Guilty to the specification as it reads, but admits having permitted the names of the men to be placed on the pay-roll."

To the 18th *Specification*, "Not Guilty."

To the 19th *Specification*, "Not Guilty."

To the **CHARGE**, "Not Guilty."

FINDING.

The Court, after mature deliberation on the testimony adduced, finds the prisoner, Colonel *F. G. d'Utassy*, of the 39th Regiment New York Volunteer Infantry, as follows:

CHARGE I.

Of the 1st *Specification*, "Not Guilty."

Of the 2d *Specification*, "Not Guilty."

Of the 3d *Specification*, "Not Guilty."

And of the **CHARGE**, "Not Guilty."

CHARGE II.

Of the 1st *Specification*, "Guilty."

Of the 2d *Specification*, "Not Guilty."

Of the 3d *Specification*, "Guilty."

And of the **CHARGE**, "Guilty."

CHARGE III.

Of the 1st *Specification*, no finding, this specification having been abandoned by the prosecution.

Of the 2d *Specification*, no finding, this specification having been abandoned by the prosecution.

Of the 3d *Specification*, "Guilty."

Of the 4th *Specification*, "Not Guilty."

Of the 5th *Specification*, "Not Guilty."

Of the 6th *Specification*, "Not Guilty."

Of the 7th *Specification*, "Not Guilty."

Of the 8th *Specification*, "Guilty."

Of the 9th *Specification*, "Confirm the plea of the accused, and find him 'Not Guilty,' the money having been exacted and paid before the appointment was made."

Of the 10th *Specification*, "Not Guilty."

Of the 11th *Specification*, "Not Guilty."

Of the 12th *Specification*, "Guilty, except the word 'falsely.'"

Of the 13th *Specification*, "Guilty."

Of the 14th *Specification*, "Guilty, except the words 'the name of John Ellenberger, a member of the Band, to be placed on the pay-rolls of Company I;' and the words 'in consideration of which, he, Colonel d'Utassy, collected from the United States Paymaster, and appropriated to his own use, two hundred and sixty dollars, which were due to the above-named men from the United States, for services rendered by them as members of the Band;' and substituting the amount two hundred and thirty-four dollars for the amount 'two hundred and sixty dollars;' and the words 'for his own use and profit.''"

Of the 15th *Specification*, "Guilty, except the words, 'In consideration of which, he, Colonel F. G. d'Utassy, collected from the United States Paymaster, and appropriated to his own use, two hundred and sixty dollars, which were due to the above-named men from the United States for services rendered by them as members of the Band,' and the words 'for his own use and profit.''"

Of the 16th *Specification*, "Guilty, except the words, 'and appropriate to his own use;' and the words, 'for his own use and benefit.''"

Of the 17th *Specification*, "Guilty, except the words, 'and appropriate to use,' and the words, 'for his own use and benefit.''"

Of the 18th *Specification*, "Not Guilty."
 Of the 19th *Specification*, "Not Guilty."
 And of the **CHARGE**, "Guilty."

SENTENCE.

And the Court, after further consideration, did sentence Colonel F. G. d'Utassy, the prisoner, "*To forfeit all pay and allowances now due and that may become due to him: To be cashiered: To be confined at hard labor for the period of one year at such place as the Secretary of War shall direct: To be disqualified from holding any office of trust, honor, or employment in the service of the United States, and the crime, name, and punishment of the delinquent to be published in at least three of the public papers of the State of New York.*"

II.. The whole proceedings of the General Court Martial in the foregoing case having been laid before the Secretary of War, the following are his orders thereon :

WAR DEPARTMENT,

May 25, 1863.

The proceedings, finding, and sentence of the Court Martial in the foregoing case are approved, and the State Prison at Sing Sing, New York, is designated as the place of confinement of the prisoner. The Adjutant General will issue the proper orders to carry the sentence into effect.

EDWIN M. STANTON,

Secretary of War.

Approved: A. LINCOLN.

MAY 27, 1863.

III.. The General Court Martial, of which Major General E. A. HITCHCOCK is President, is hereby dissolved.

BY ORDER OF THE SECRETARY OF WAR:

E. D. TOWNSEND,

Assistant Adjutant General.